

11 USC §1322(b)(3)
11 USC §541
ORS 312.120(2)
Comity

In re Hollins

Case No. 392-37351-H13 HLH

1-25-93

Before the chapter 13 petition was filed, Multnomah County foreclosed on the debtor's real property for failure to pay the property taxes when due. The debtor's plan treated Multnomah County as the holder of a secured claim and proposed to cure the default in the payment of the property taxes over the life of the plan.

The County objected to confirmation on the ground the debtor could only redeem the property by payment in full of the amount due within 2 years of the foreclosure in accordance with ORS 312.120(2).

The court overruled the objection and confirmed the plan on the ground that §1322(b)(3) gives a chapter 13 debtor the right to cure "any" default. The only limit on this right is found, as a logical matter, in §541 which describes property of the estate. In this case, the debtor had an interest in the realty at the time she filed the petition by virtue of her statutory right of redemption. That interest became part of the estate. This fact and the fact that §1322(b)(3) allows a cure of any default, gave the debtor the power to cure the default in the payment of the tax debt by paying the taxes over the life of the plan notwithstanding the state law requirements for redemption.

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5 UNITED STATES BANKRUPTCY COURT
6 FOR THE DISTRICT OF OREGON
7

8 In Re)
9) Case No. 392-37351-H13
10 EILEEN LEONA HOLLINS)
11) OPINION
12)
13 Debtor.)
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17 This matter came before the court upon an objection to
18 confirmation of the chapter 13 debtor's proposed plan. The
19 objection was filed on behalf of Multnomah County. The County
20 is represented by Sandra Duffy and the debtor by Kent V.
21 Snyder, both of Portland, Oregon.

22 The debtor was the owner of certain real property located
23 in Multnomah County. The debtor contends the property is worth
24 \$55,000. This contention has not been disputed. The debtor
25 failed to pay property taxes totaling \$4,180.50 on the property
26 and the County foreclosed on the property before this case was
27 filed. The debtor's state law redemption period expires on
28 September 26, 1994. See ORS 312.120(2).

29 The debtor's plan proposes to pay the County \$210 monthly
30 (after administrative expenses are paid) including interest at
31 16%. The County objects to confirmation on the ground it is
not a creditor and that the plan fails to provide for payment

1 in full of the amount due within the two year redemption period
2 provided under state law.

3 The facts in this case are nearly identical to those that
4 resulted in this court's opinions in In Re Desrosiers, 145 B.R.
5 671 (Bankr. Or. 1992); In re O'Neal, 142 B.R. 671 (Bankr. Or.
6 1992); In re Coultas, Case No. 392-34206-H13, slip op. dated
7 October 13, 1992, and the supplemental opinion in In Re Ivory,
8 146 B.R. 411 (Bankr. Or. 1992).

9 The County seems to proceed from the assumption that the
10 debtor's only option is to redeem the property from the
11 foreclosure sale in accordance with applicable state law.
12 While this may be the debtor's only option under state law, the
13 debtor is also entitled to exercise her rights under federal
14 bankruptcy law. One of those rights is the right to "cure" the
15 default under 11 U.S.C. §1322(b) (3).

16 As discussed at length in the opinions cited above, such
17 a cure will result in the debtor regaining her pre-default
18 interest in the property. Thus, a cure of the pre-petition
19 default through a chapter 13 plan is not the same as a
20 redemption from the sale under state law. Therefore, the
21 federal bankruptcy law does not change the time for redemption,
22 as the County seems to argue. Rather, federal bankruptcy law
23 offers the debtor a different mechanism to recover her interest
24 in the property.

1 To the extent the federal law changes the result that
2 would obtain under state law, state law must yield. This
3 conclusion is mandated by the United States Constitution which
4 provides that federal law is the supreme law of the land. This
5 concept is referred to as preemption.

6 It is not necessary that Congress explicitly state in each
7 (or any) section of the Bankruptcy Code that "this section is
8 intended to change the result that would obtain under the laws
9 of the states of" The U.S. Constitution itself specifies
10 that Congress may enact "uniform" laws of bankruptcy. If the
11 Bankruptcy Code did not preempt contrary state law, uniformity
12 would be impossible.

13 In fact, one of the primary components from which the
14 foundation of the Bankruptcy Code is built is that once a
15 petition in bankruptcy is filed, the debtor and all his
16 creditors are governed by federal bankruptcy law regardless of
17 contrary state law. Nowhere is this more evident than in the
18 provisions of 11 U.S.C. §362, the automatic stay, which
19 prevents creditors from exercising their otherwise valid state
20 law rights to collect a valid debt. There are many such
21 examples in the Bankruptcy Code.

22 Thus, although neither 11 U.S.C. §1322(b)(3) nor any other
23 code section expressly states that it preempts contrary state
24 law, such is the case.

For these reasons and all the reasons stated in Desrosiers, Coultas, O'Neal and Ivory, which reasons are incorporated herein by reference, this court overrules the County's objections and will enter an order confirming the debtors' plan.

DATED this _____ day of January, 1993.

Henry L. Hess, Jr.
Bankruptcy Judge

cc: Sandra Duffy
Kent V. Snyder
Robert W. Myers, Trustee